

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TRACEY WHITE ET AL,)	
)	
Plaintiffs,)	
)	
vs.)	Case No.: 4:14CV01490 HEA
)	
THOMAS JACKSON, ET AL,)	
)	
Defendants.)	

***DEFENDANTS CITY OF FERGUSON, THOMAS JACKSON,
JUSTIN COSMA, MATT DELIA, BRANDON MCKINNON, AND
RYAN DEVOUTON’S JOINT MOTION TO EXCLUDE EXPERT
TESTIMONY PURSUANT TO DAUBERT***

COME NOW Defendants, the City of Ferguson, former Ferguson Chief of Police Thomas Jackson, former Ferguson Police Officer Justin Cosma, and Maryland Heights Lieutenant Matt Delia and Officers Brandon McKinnon and David “Ryan” DeVouton (“Defendants”), and for their Joint Motion to Exclude Testimony pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), state as follows:

1. The remaining counts in Plaintiffs’ Third Amended Complaint (Doc. No. 81) include state law claims of false arrest, battery, and assault, and federal claims based on 42 U.S.C. § 1983 and the Fourth Amendment regarding excessive force, unlawful arrest, and municipal liability.
2. On December 15, 2015, Plaintiffs disclosed Mr. Robert Pusins as a purported expert in this lawsuit. Ex. A, Pusins signed report.

3. The Eighth Circuit has three criteria which must be met for expert testimony to be admitted under Federal Rule of Evidence 702:
 - A. “First, evidence based on scientific, technical, or other specialized knowledge must be useful to the finder of fact in deciding the ultimate issue of fact. This is the basic rule of relevancy.” *La Lauzon v. Senco Prods., Inc.*, 270 F.3d 681, 686 (8th Cir. 2001).
 - B. “Second, the proposed witness must be qualified to assist the finder of fact.” *Id.* (citation omitted).
 - C. “Third, the proposed evidence must be reliable or trustworthy in an evidentiary sense, so that, if the finder of fact accepts it as true, it provides the assistance the finder of fact requires.” *Id.* (internal quotation marks omitted). To meet the third requirement, the testimony must be “based on sufficient facts or data” and be “the product of reliable principles and methods,” and the expert must have “reliably applied the principles and methods to the facts of the case.” Fed. R. Evid. 702(b)-(d); *Roberts v. Gen. Motors, LLC*, 2015 WL 6955362, at *2–3 (E.D. Mo. Nov. 10, 2015).
4. As Mr. Pusins’ testimony does not assist the trier of fact in reaching any of the ultimate issues against Defendants the City of Ferguson, Thomas Jackson, Justin Cosma, Matt Delia, Ryan DeVouton and Brandon McKinnon, and for reasons more fully stated in Defendants’ Memorandum in Support, the testimony of Plaintiff’s expert Mr. Robert Pusins fails to meet any of the above three criteria and should be excluded under *Daubert*.

WHEREFORE, Defendants respectfully pray that this Court enter its order to exclude any testimony from Mr. Robert Pusins, or, in the alternative, to bifurcate proceedings between these Defendants and Plaintiffs and exclude said testimony from claims against these Defendants, and for such further relief as this Court deems just and proper.

/s/Peter J. Dunne

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I hereby certify that a copy of the foregoing filed electronically with the Clerk of the Court this 7th day of April, 2016, to be served by operation of the Court's electronic filing system upon the following:

- Gregory L. Lattimer, Attorney for Plaintiffs, 1200 G. Street, N.W., Suite 800, Washington, D.C. 20005, lattlaw@aol.com;
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- Michael E. Hughes, Attorney for Defendants St. Louis County and Chief Jon Belmar, 41 S. Central Ave, Clayton MO 63105, mhughes2@stlouisco.com.
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/s/ Peter J. Dunne
